

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
U.S. DISTRICT COURT
CLERK'S OFFICE

2005-11372-MEL P 249

MARCUS GORDON, M.D.)
Plaintiff)
vs.) Civil Action No. 05-11372-MEL
9 BRANCH STREET, L.L.C.,)
BROOKS C-1 CONTROL CORPORATION,)
HAROLD J. BROOKS and)
JOSEPH FRIEDMAN)
Defendants)

DEFENDANTS' MOTION TO DESIGNATE
CASE FOR TRIAL BY JURY

NOW COME 9 Branch Street, L.L.C., Brooks C-1 Control Corporation, Harold J. Brooks and Joseph Friedman, defendants in the above-entitled matter, by and through their attorneys, Wiggin & Nourie, P.A., and respectfully move that the Honorable Court designate this case as a matter for trial by jury on the following grounds:

1. This case originated in the Norfolk County Superior Court under complaint dated June 10, 2005.
2. Prior to the filing of an appearance and answer in that Court by the defendants, a petition to remove such action to the federal court was filed.

3. At the time the defendants filed the June 27, 2005 Notice of Removal with this Court, a request to designate the case for trial by jury was not made as a result of accident, mistake and misfortune, and not as a result of neglect.

4. This case is in its earliest stages, having just been filed with the Court. No discovery has taken place. The parties have yet to exchange the required Rule 26 Initial Disclosures. The parties have yet to arrange a date and time for the required Rule 26 conference of parties' planning for discovery.

5. No prejudice has or will accrue to the plaintiff as a result of such jury designation.

6. In an effort to secure the concurrence from opposing counsel to this ministerial matter, counsel for the plaintiff advised that it objects to such relief.

7. No memorandum of law is being submitted with this Motion as the defendants respectfully state that the basis for the relief requested herein is within the sound discretion of the Court.

WHEREFORE, the defendants respectfully pray as follows:

- A. That the Honorable Court designate this case as a matter for trial by jury.
- B. That the Honorable Court grant this motion facially.
- C. And for other and further relief as justice may require.

Respectfully Submitted,
9 Branch Street, L.L.C.,
Brooks C-1 Control Corporation,
Harold J. Brooks and Joseph Friedman
By Their Attorneys,
WIGGIN & NOURIE, P.A.

July 29, 2005

By: 
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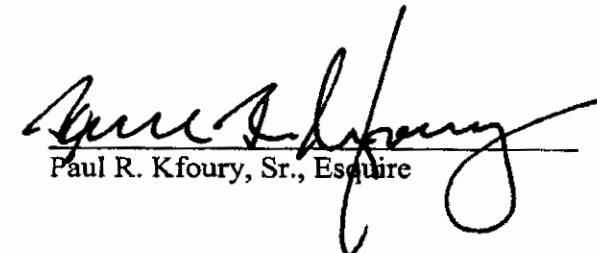
CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of July, 2005 service of a copy of the foregoing Defendants' Motion for Trial by Jury was made on the attorneys of record for plaintiff by mailing a true copy thereof, contained in a sealed envelope, with postage prepaid, addressed to said attorneys as shown below.

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July 29, 2005


Paul R. Kfoury, Sr., Esquire